

ADOLPH B. CANELO
JAMES H. WILSON
RICKEY D. WALLACE
JAMES P. PADRON
ERIC W. CHAUDRON
DAVID D. HAYCRAFT

RICHARD L. HARRIMAN, *Of Counsel*

LAW OFFICES OF
**CANELO, WILSON,
WALLACE & PADRON**
PROFESSIONAL CORPORATION
548 WEST 21st STREET
POST OFFICE BOX 2165
MERCED, CA 95344-0165

THOMAS J. KANE, JR. 1920-1 '13

TELEPHONE
(209) 383-0720
FAX 383-4213

Debra K. Crisp, Legal Assistant

November 10, 2005

NOV 22 2005
FBI
MERCED

Mr. Warren W. Gross
California Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, California 93706

Subject: Mitigated Negative Declaration
Project to Remediate Soil and Groundwater
Nicoletti Oil Bulk Petroleum Plant
Dos Palos, Merced County, California

Dear Mr. Gross:

On October 25, 2005, the California Regional Water Quality Control Board, Central Valley Region (RWQCB), issued a Notice of Completion (NOC) and Initial Study (IS) for a Mitigated Negative Declaration (MND) based on a Remedial Action Plan (RAP) submitted to the RWQCB by TRC on behalf of ExxonMobil Oil Corporation (Exxon). The RAP describes a program intended to remediate petroleum hydrocarbons in soil and groundwater in the vicinity of the Nicoletti Oil Bulk Petroleum Plant, the City of Dos Palos right-of-way along Blossom Street, and private residences north of Blossom Street.

Canelo, Wilson, Wallace & Padron represents the following owners of private residences located just north of Blossom Street:

Rich and Linda Butler
2857 Marguerite Street
Dos Palos, CA 93620

Gloria Avila Parsons
2810 Blossom Street
Dos Palos, CA 93620-2406

Charles and Loretta Bates
2805 Marguerite Street
Dos Palos, CA 93620-2414

Felix R., Jr. and Delia Esquivel
2802 Blossom Street
Dos Palos, CA 93620-2406

Pablo Garcia Martinez
2709 Marguerite Street
Dos Palos, CA 93620-2412

Larry and Gayle Bonds
1518 Valeria Street
Dos Palos, CA 93620-2732

Thomas and Dawn Climer
2833 Marguerite Street
Dos Palos, CA 93620-2414

The owners of these homes have already had the value of their property diminished by the releases of petroleum hydrocarbons in soils and groundwater below their lots. Some, if not all, of the residents of these homes have exposure to volatile petroleum hydrocarbons in air inside and outside the residences from those releases.

Mitigated Negative Declaration

The RAP describes "soil vapor extraction" as a presumptive remedy for petroleum hydrocarbons in soil. The extraction system would consist of five soil vapor extraction wells, a collection manifold of piping, a vacuum pump, a gas-fired thermal oxidizer, and emissions to air. The RAP describes a groundwater pump/treat/discharge system for remediation of petroleum hydrocarbons in groundwater; the system would consist of extraction wells, a collection manifold of piping, groundwater pump(s), a water treatment system, and a discharge to the City of Dos Palos sewer system. The water treatment system would consist of an air stripper followed by granular activated carbon (GAC) filters with off-gas treatment by the gas-fired thermal oxidizer.

In the IS, the RWQCB indicates that the only environmental impacts are related to noise from the remediation systems, air quality impacts from treatment system emissions, and water quality impacts from the discharge to the City sewer system and that these potential environmental impacts are "less than significant" (rather than "less than significant with the proposed mitigations"). However, in the MND, the RWQCB finds that the project will not have a significant effect because revisions (mitigations) to the project have been made or agreed to by the project proponent and that these mitigations prevent a significant effect. Specifically, the RWQCB finds:

1. Local and/or county ordinances generally limit sound levels at property lines and/or at the location of sensitive receptors such as the residences north of Nicoletti Oil. The treatment system is set back from the street in part to avoid excessive noise levels at the property line and equipment is constructed to limit sound emissions to levels reasonably expected to conform to noise ordinance requirements. However, the actual noise levels that will be experienced at the property line or at nearby sensitive receptors cannot be accurately predicted in advance. If system operation results in unacceptable noise levels, the local enforcement agency will take appropriate action, or if necessary, the Regional Board will require retrofitting of the system to alleviate any problems.
2. The proposed equipment is designed to provide treatment sufficient to meet criteria established by the San Joaquin Valley Air Pollution Control District (SJVAPCD). The SJVAPCD will require appropriate monitoring and that established emission criteria are met. If emissions criteria are not met, the system will be shut down until modified as necessary to meet consistently the emission criteria.
3. Extracted water will be treated prior to discharge into the Dos Palos municipal sewer system. The project is designed to consistently produce an effluent quality that will have no effect on the sewage treatment plant quality. If effluent design criteria are not met by the project, the Regional Board will require that the system be shut down until modified as necessary to meet effluent criteria.

4. The project does not have environmental effects which will cause substantial adverse effects on human beings (emphasis added). Specifically, the RWQCB finds that the influence of the SVE system will extend into impacted residential areas and create a pressure differential that ensures residents will not be exposed to harmful concentrations of VOCs from the Site during the life of the project.
5. The project does not have impacts that are individually limited, but cumulatively considerable (emphasis added).

Based on the above, the RWQCB also finds in the MND that "although the project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the proposed project have been made by or agreed to by the project proponent. A Mitigated Negative Declaration will be prepared." This finding shall be subsequently referred to as the MND finding.

Regulatory Framework

Section 15382 of the California Code of Regulations (CCR) indicates that a "Significant effect on the environment means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

Section 15355 of the CCR indicates that "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

Assembly Bill 3180 (Section 21081.6 of the Public Resource Code) was adopted to ensure that required mitigation measures were being implemented. Section 21081.5 provides that:

The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

The California Office of Planning and Research guidance on Mitigated Negative Declarations indicates that the program should include:

A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.

A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any.

A means of recording compliance at the time of each check.

A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.

Provisions for funding monitoring activities, including the imposition of fees.

Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval).

Comments on Mitigated Negative Declaration

On behalf of our residential clients, Canelo, Wilson, Wallace & Padron have prepared the following comments. Generally, the RWQCB needs to determine if potential environmental impacts for air, noise, and water quality are "less than significant with the mitigation incorporated" or "insignificant." The RWQCB also needs to reevaluate potential environmental impacts to nearby residents, including cumulative impacts from all VOC sources emanating from the vicinity of the Nicoletti site. Specific comments on the above numbered RWQCB findings are:

1. Contrary to the MND finding (there will be no significant effect), the RWQCB finds that the project may result in "unacceptable noise levels." The IS fails to address noise generated during remediation system construction and fails to identify the local agency responsible for enforcing noise limitations. As such, the MND finding is inappropriate because the RWQCB has not specified, as a condition of approval:

A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.

A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any.

A means of recording compliance at the time of each check.

A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.

Provisions for funding monitoring activities, including the imposition of fees.

Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval).

2. Contrary to the MND finding (there will be no significant effect), the IS finds that the project may not comply with SJVAPCD air permit requirements and indicates that an unidentified agency will shut the remediation system down. Failure to comply with the air permit requirements could expose the area residents to VOCs in air from inadequately treated emission stream. Also, the IS does not address VOC

emissions that are likely to occur during system installation (fugitive VOCs from trench excavations and or borings). As such, the MND finding is inappropriate because the RWQCB has not specified, as a condition of approval:

A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.

A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any.

A means of recording compliance at the time of each check.

A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.

Provisions for funding monitoring activities, including the imposition of fees.

Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval).

3. Contrary to the MND finding (there will be no significant effect), the RWQCB finds that the project may not comply with effluent limitations. Failure to comply with effluent limitations may result in accumulation of potentially flammable VOCs in the sewer line running down Blossom Street which could be a safety hazard for the area residents and others using the street right-of-way. As such, the MND finding is inappropriate because the RWQCB has not specified, as a condition of approval:

A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.

A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any.

A means of recording compliance at the time of each check.

A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.

Provisions for funding monitoring activities, including the imposition of fees.

Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval).

4. The RWQCB finds that the project does not have environmental effects which will cause substantial adverse effects on human beings (emphasis added). As described in our response to items 2 and 3 above, area residents are likely to be exposed to VOCs from construction of the remediation systems and may be exposed to VOCs if remediation operators fail to comply with mitigation standards. Unless the RWQCB can accurately quantify these exposures and show them to be less than public health standards for ambient air and for indoor air, those exposures should be considered significant effects. As such, the MND finding is inappropriate because the RWQCB has not specified, as a condition of approval:

A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.

A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any.

A means of recording compliance at the time of each check.

A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.

Provisions for funding monitoring activities, including the imposition of fees.

Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval).

5. The RWQCB finds that the project does not have impacts that are individually limited, but cumulatively considerable (emphasis added). In addition, the RWQCB finds that the influence of the SVE system will extend into impacted residential areas and create a pressure differential that "ensures residents will not be exposed to harmful concentrations of VOCs from the Site during the life of the project." As described in comment 1 above, the RWQCB has not established a mitigation program sufficient to ensure that treatment system emissions, singly, will not cause a significant effect for the residents of the nearby homes. The potential cumulative effects from existing and proposed VOC emissions from the Nicoletti site are not addressed in the MND. Potential pathways for VOCs in air from the Site to the nearby residences include emissions from construction and operation of the proposed remediation systems and the otherwise unevaluated emissions from fuel storage to ambient air, from vehicle fueling operations to ambient air, from emissions from soil vapors migrating into ambient air and indoor air within the residences, and from emissions from groundwater migrating into ambient air and indoor air within the residences. The RWQCB has not considered the cumulative effects of all of these sources of VOCs on the health of residents in the nearby homes. As such, the MND finding is inappropriate.

On behalf of the homeowners for private residences located north of Blossom Street, Canelo, Wilson, Wallace & Padron requests that the RWQCB address each of the above 5 comments with commitments and language consistent with the CEQA statutes, regulations, and guidance documents to ensure that the mitigations imposed protect the residents along Blossom Street from significant environmental effects, or the RWQCB should prepare an Environmental Impact Report for the project.

Re: Nicoletti Oil
November 10, 2005
Page 7

Sincerely,

CANELO, WILSON, WALLACE & PADRON
Professional Corporation



ERIC W. CHAUDRON

Ccs: Ms. Karen A. Caffey, Esq.
Steven R. Tekosky, Esq.
Clients

DEPARTMENT OF TRANSPORTATION

P.O. BOX 2048 STOCKTON, CA 95201

(1976 E. CHARTER WAY/1976 E. DR. MARTIN

LUTHER KING JR. BLVD. 95205)

TTY: California Relay Service (800) 735-2929

PHONE (209) 941-1921

FAX (209) 948-7194

*Flex your power!
Be energy efficient!*

November 16, 2005

**10-MER-33-PM 1.16
Mitigated NEG DEC
Nicoletti Oil
SCH #2005101124**

Mr. Warren Gross
California Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, CA 93706

Dear Mr. Gross:

Per our telephone conversation earlier today, please see our *revised* comments below for the Mitigated Negative Declaration for Nicoletti Oil. The proposed project is to remediate impacted soil and polluted groundwater beneath the Nicoletti Oil bulk petroleum plant. The proposed site is located at 2801 Blossom Street and properties immediately to its north in the City of Dos Palos.

To avoid any future miscommunication and to adequately analyze future proposed projects, please provide a detailed site plan for our review and comment.

An Encroachment Permit will be required for work (if any) done within the Department's right of way. This work is subject to the California Environmental Quality Act. Therefore, additional biological, archaeological, or other environmental studies may be required as part of the encroachment permits application. A qualified professional must conduct any such studies undertaken to satisfy the Department's environmental review responsibilities. Ground disturbing activities to the site prior to completion and/or approval of required environmental documents may affect the Department's ability to issue a permit for the project. Furthermore, if engineering plans or drawings will be part of your permit application, they should be prepared in standard units.

Mr. Warren Gross
November 16, 2005
Page 2

If you have any questions, please contact Dee Maddox at (209) 942-6022 (email: dee_maddox@dot.ca.gov) or me at (209) 941-1921. We look forward to continuing to work with you in a cooperative manner.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Dumas for".

TOM DUMAS, Chief
Office of Intermodal Planning

cc: Scott Morgan, State Clearinghouse



San Joaquin Valley
Air Pollution Control District



November 28, 2005

Reference # C200501512

Warren Gross
California Regional Water
Quality Control Board
4685 "E" Street
Fresno, CA 93706

Subject: Proposed Mitigated Negative Declaration for Project to Remediate Soil and Groundwater at
Nicoletti Oil Bulk Petroleum Plant, Merced County

Dear Mr. Gross,

The San Joaquin Valley Air Pollution Control District (District) has reviewed the project referenced above and offers the following comments:

The entire San Joaquin Valley Air Basin is designated non-attainment for ozone and particulate matter (PM10 and PM2.5). Preliminary analysis indicates that the installation and operation of remediation equipment would not generate significant air emissions. However, the increase in emissions from this project, and others like it, cumulatively reduce the air quality in the San Joaquin Valley. A concerted effort should be made to reduce project-related emissions as outlined below:

This project will be subject to the permitting requirements of the District and will require a Permit to Operate (PTO). Any equipment subject to the District's PTO requirements must obtain an Authority to Construct (ATC) from the District. Construction of equipment, which requires an ATC, and intimately related appurtenances such as foundations and utility hookups for the equipment, cannot begin until an ATC is obtained. Construction of equipment not requiring a District permit is not subject to this ATC requirement. Depending upon the nature and complexity of the application and staff workload, ATC approval can take several months. **For further information, the applicant should contact the District's Small Business Assistance Office at (209) 557-6446 or our Permit Services Section at (209) 557-6400.** To avoid unnecessary delays in the project, applications should be submitted to the District as soon as the project developer has determined the scope of the project.

Based on the information provided, the proposed project will be subject to the following District rules. The following items are rules that have been adopted by the District to reduce emissions throughout the San Joaquin Valley, and are required. This project may be subject to additional District Rules not enumerated below. To identify additional rules or regulations that apply to this project, or for further information, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (209) 557-6446. Current District rules can be found at <http://www.valleyair.org/rules/1ruleslist.htm>.

David L. Crow
Executive Director / Air Pollution Control Officer

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 • FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 • FAX (559) 230-6061
www.valleyair.org

Southern Region Office
2700 M Street, Suite 275
Bakersfield, CA 93301-2373
(661) 326-6900 • FAX (661) 326-6985

Regulation VIII (Fugitive PM10 Prohibitions) Rules 8011-8081 are a series of rules designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction and demolition activities, road construction, bulk materials storage, paved and unpaved roads, carryout and trackout, landfill operations, earthmoving activities, etc. The District's compliance assistance bulletin for construction sites can be found at: <http://www.valleyair.org/busind/comply/PM10/Reg%20VIII%20CAB.pdf>.

If a non-residential project is 5.0 or more acres in area or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials on at least three days, a Dust Control Plan must be submitted as specified in Section 6.3.1 of Rule 8021. **Construction activities shall not commence until the District has approved the Dust Control Plan.** A template of the District's Dust Control Plan is available at: <http://www.valleyair.org/busind/comply/PM10/forms/DCP-Form%20-%2010-14-2004.pdf>.

If a non-residential site is 1.0 to less than 5.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities as specified in Section 6.4.2 of Rule 8021. A template of the District's Construction Notification Form is available at: <http://www.valleyair.org/busind/comply/PM10/forms/Reg%20VIII%20Notification%20-%2011-17-2004.pdf>.

Rule 2201 (New and Modified Stationary Source Review Rule) This rule applies to all new stationary sources and all modifications of existing stationary sources which are subject to the District permit requirements and after construction emit or may emit one or more affected pollutant. The applicant must contact the District's Small Business Assistance Office at (209) 557-6446 to receive additional information/instructions.

Rule 4101 (Visible Emissions) This rule prohibits emissions of visible air contaminants to the atmosphere and applies to any source operation that emits or may emit air contaminants. The applicant must contact the District's Small Business Assistance Office at (209) 557-6446 to receive additional information/instructions.

Rule 4102 (Nuisance) This rule applies to any source operation that emits or may emit air contaminants or other materials. In the event that the project or construction of the project creates a public nuisance, it could be in violation and be subject to District enforcement action.

Rule 4201 (Particulate Matter Concentration) This rule establishes a particulate matter emission standard and applies to any source operation that emits or may emit dust, fumes, or total suspended particulate matter.

Rule 4202 (Particulate Matter Emission Rate) This rule establishes allowable emission rates and applies to any source operation that emits, or may emit, particulate matter emissions.

Rule 4301 (Fuel Burning Equipment) This rule limits the emission of air contaminants from fuel burning equipment and the concentration of combustion contaminants. It specifies maximum emission rates for sulfur dioxide, nitrogen oxide and combustion contaminant emissions.

Rule 4651 (Volatile Organic Compound Emissions from Decontamination of Soil) This rule limits VOC emissions from the excavation and treatment of soil that has been contaminated by organic liquid as a result of leakage from storage or transfer facilities, from accidental spillage, or other deposition.

Rule 4801 (Sulfur Compounds) This rule limits the emissions of sulfur compounds and applies to any discharge to the atmosphere of sulfur compounds which would exist as a liquid or a gas at standard conditions.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call me at (559) 230-5800 or Mr. Hector R. Guerra, Senior Air Quality Planner, at (559) 230-5820 and provide the reference number at the top of this letter.

Sincerely,



Jessica R. Willis
Air Quality Specialist
Central Region

C: File

RESPONSE TO COMMENTS FROM CANELO, WILSON, WALLACE & PADRON ON THE MITIGATED NEGATIVE DECLARATION

Comment #1

Summary: The comment notes that the Initial Study (IS) fails to address noise generate during remediation system construction.

Response: ExxonMobil has proceeded with construction of the treatment facilities. The project contemplated by the IS and the Mitigated Negative Declaration (MND) is limited to the long-term operation and maintenance of the treatment facilities.

Comment #2

Summary: The comment notes that the IS fails to address air emissions generated during remediation system construction.

Response: As with comment #1, although it should be noted measures were taken during construction of the system to monitor and limit air emissions such as assuring that excavation spoils were placed in covered bins and trenches remained open for as short a period of time as possible.

Comment #3

Summary: The comment notes that the project may not comply with effluent limitations, which could present a safety hazard if there is a resulting accumulation of flammable constituents in the sewer line.

Response: The project will be subject to effluent limitations proscribed by the City Dos Palos who owns and operates the wastewater treatment plant. Monitoring of effluent will be required by the permit to discharge and in accordance with the Monitoring and Reporting Program, which is a part of the Cleanup and Abatement Order for the site. Treatment consists of passing the water through three carbon treatment vessels prior to discharge. The carbon is slowly used up and effluent levels would rise slowly, even if the Discharger failed to change the carbon in a timely manner. Monitoring programs would detect excessive levels of constituents in the effluent long before those levels could reach hazardous levels.

Comment #4

Summary: The comment again notes that the IS fails to address air emissions, particularly monitoring, generated during remediation system construction.

Response: See response to Comment #2, above.

Comment #5

Summary: The comment notes that cumulative effects from existing and proposed VOC emissions are not addressed in the MND. Existing sources include emissions from fuel storage, vehicle refueling, emission from soil vapors and groundwater to ambient and indoor air within residences.

Response: In accordance with the CAO and its attendant Monitoring and Reporting Program, monitoring will be conducted to assure that the project lessens and largely prevents emissions from soil vapor and groundwater to ambient and indoor air. The project does not address emissions from fuel storage and dispensing activities although some benefit could be expected as the project will draw ambient air, to which residents might have otherwise been exposed, into the treatment system. Thus, with regard to existing emissions, the project can only have a beneficial impact.